

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Red Lion Broadcasting Company, Inc.)
)
v.) CSR-8002-M
)
Comcast of Southeast Pennsylvania, Inc.)

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 2008

Released: November 24, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On or about September 20, 2004, Nielsen Media Research (“Nielsen”) added Franklin County, Pennsylvania to the Harrisburg-Lancaster-Lebanon-York Designated Market Area (“DMA”). Red Lion Broadcasting Company, Inc., licensee of a television station in the same DMA, WGCB-TV, Red Lion, Pennsylvania (“WGCB”),¹ demanded on June 12, 2008 that Comcast of Southeast Pennsylvania, Inc. (“Comcast”) carry its signal on Comcast’s cable systems located in Franklin County.² Comcast refused this carriage demand,³ and on July 2, 2008, WGCB filed a mandatory carriage complaint⁴ against Comcast pursuant to Section 76.61 and 76.7 of the Commission’s rules.⁵ WGCB requests that the Commission order Comcast to carry WGCB on Comcast’s Franklin County cable systems, beginning immediately.⁶ Comcast filed an opposition to this pleading, and WGCB filed a reply.⁷ For the reasons discussed below, we deny WGCB’s complaint.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended (hereinafter the “Act”), and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“Must Carry Order”), commercial television broadcast stations, such as WGCB, are entitled to assert mandatory

¹ We refer in all instances to WGCB as the complainant, rather than its licensee, Red Lion Broadcasting.

² See Complaint by Red Lion Broadcasting Company, Inc., filed July 2, 2008, at Exhibit A.

³ See Complaint at Exhibit B.

⁴ See Complaint.

⁵ 47 C.F.R. § 76.61, 76.7.

⁶ See Complaint at 4-5.

⁷ Opposition to Must Carry Complaint by Comcast Cable Communications, LLC, filed August 14, 2008; Reply to Opposition to Must-Carry Complaint by Red Lion Broadcasting Company, Inc., filed September 10, 2008.

carriage rights on cable systems located within the station's market.⁸ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen.⁹ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to Section 325 of the Act and the Commission's rules adopted in the Must Carry Order, no commercial television broadcast signal may be retransmitted on a cable system without the express authority of the originating station.¹⁰ This authority may be expressed by a station's election of mandatory carriage pursuant to Section 614 of the Act, as described above, or by its election of retransmission consent. Television stations having mandatory carriage rights make their carriage elections at three year intervals for each cable system on which they wish to be carried.¹¹ When making their triennial carriage elections, stations determine in which markets they are eligible for carriage by consulting the DMA Market and Demographic Rank Reports produced by Nielsen ("Nielsen DMA lists").¹² Section 76.55(e)(2)(ii) states that "[t]he applicable DMA list for the 2002 election pursuant to §76.64(f) will be the DMA assignments specified in the 2000-2001 list, and so forth for each triennial election pursuant to §76.64(f)."¹³ Pursuant to this Section, the applicable Nielsen DMA list for the October 2005 election consisted of the DMA assignments specified in the 2003-2004 Nielsen DMA list.

4. WGCB is licensed to the community of Red Lion in York County, Pennsylvania and serves communities located in the Harrisburg-Lancaster-Lebanon-York DMA.

5. Comcast operates several cable systems in Franklin County, Pennsylvania. Under the 2003-2004 Nielsen DMA list, Franklin County was assigned to the Washington D.C. DMA. On or about September 20, 2004, Nielsen released its 2004-2005 DMA list, which reassigned Franklin County from the Washington D.C. to the Harrisburg-Lancaster-Lebanon-York DMA.

6. On June 12, 2008, over three years and eight months after the Nielsen reassignment, WGCB sent a letter demanding that Comcast immediately begin carrying its commercial, full power television broadcast station, WGCB-TV, and/or its digital television station, WGCB-DT, on all cable systems serving communities in Franklin County.¹⁴

7. On June 18, 2008, Comcast responded by letter denying WGCB's mandatory carriage on these cable systems.¹⁵ Comcast asserts that pursuant to Sections 76.55(e)(2)(ii) and 76.64(f) of the Commission's rules, the 2003-2004 Nielsen DMA assignment controlled WGCB's October 2005 carriage

⁸ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975-77, ¶¶ 41-46 (1993) ("Must Carry Order").

⁹ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by Nielsen Media Research. 47 C.F.R. § 76.55(e)(2).

¹⁰ See 47 U.S.C. § 325, *Must Carry Order*, 8 FCC Rcd 2965, 2996, ¶ 129, *et seq.* (1993).

¹¹ See 47 U.S.C. § 534; 47 C.F.R. § 76.56; 47 C.F.R. § 76.64(f)(2).

¹² See Note to Paragraph 47 C.F.R. § 76.55(e).

¹³ See 47 C.F.R. § 76.55(e)(2)(ii).

¹⁴ See Complaint at 1 and n.1 (citing Ex. A, Jun. 12, 2008 Letter from Christopher D. Imlay, Communications Counsel, Red Lion Broadcasting Company, Inc., to Tom Nathan, Comcast).

¹⁵ See *id.* at Ex. B, Jun. 18, 2008 Letter from Michael Nissenblatt, Vice President, Broadcaster Relations, Comcast to Christopher D. Imlay, Communications Counsel, Red Lion Broadcasting Company, Inc.

election rights as well as the subsequent triennial carriage cycle.¹⁶ According to Comcast, because Franklin County was assigned to the Washington D.C. DMA by the 2003-2004 Nielsen DMA list, WGCB could not have elected carriage on Comcast's Franklin County cable systems in October 2005 and was not entitled to carriage on those systems for the triennial carriage cycle, January 1, 2006 – December 31, 2008.¹⁷

III. DISCUSSION

8. The parties do not dispute that WGCB was entitled to elect carriage on Comcast's Franklin County cable systems on October 1, 2008, based upon the 2006-2007 Nielsen DMA list. Based upon the 2006-2007 Nielsen DMA list, WGCB will be eligible for carriage in Franklin County for the January 1, 2009 – December 31, 2011 carriage cycle.¹⁸

9. The current triennial carriage cycle extends from January 1, 2006 through December 31, 2008. During this cycle, WGCB had to make carriage elections for cable systems lying within its DMA by October 1, 2005.¹⁹ According to Section 76.55(e)(2)(ii) of the Commission's rules, WGCB was required to utilize "the DMA assignments specified in the [2003-2004 Nielsen] list" in making these elections.²⁰ Because the 2003-2004 Nielsen list did not include Franklin County in the Harrisburg-Lancaster-Lebanon-York DMA, WGCB could not elect carriage on Comcast's Franklin County cable systems under the October 2005 election period. Moreover, while the Nielsen market definition changed to include Franklin County in September 2004, after the 2004-2005 Nielsen DMA list was released, WGCB did not demand carriage in Franklin County until June, 2008.²¹ Accordingly, WGCB is not entitled to carriage on Comcast's Franklin County cable systems during the January 1, 2006 through December 31, 2008 triennial carriage cycle.

IV. CONCLUSION

10. Pursuant to Sections 76.55(e)(2)(ii) and 76.64(f) of our rules and the applicable 2003-2004 Nielsen DMA list, we find that WGCB did not have carriage election rights on Comcast's Franklin County cable systems for the October 2005 election period, controlling carriage for the January 1, 2006 through December 31, 2008 triennial carriage cycle. Accordingly, we will deny WGCB's must-carry complaint.

¹⁶ See Opposition at 2 & n.7.

¹⁷ See Opposition at 2-3.

¹⁸ WGCB will be eligible for carriage if it meets the requirement of providing a good quality signal. See 47 C.F.R. § 76.55(c)(3).

¹⁹ See 47 C.F.R. § 76.64(f)(2).

²⁰ See 47 C.F.R. § 76.55(e)(2)(ii).

²¹ While a station that is eligible for carriage on a cable system as a result of a successful market modification proceeding may elect must-carry status on that system within 30 days of the effective date of the market's redefinition, see 47 C.F.R. § 76.64(f)(5), WGCB did not elect to file such a petition.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that the Mandatory Carriage Complaint of Red Lion Broadcasting Company, Inc., licensee of full power television broadcast station WGCB-TV, Red Lion, Pennsylvania, Facility ID No. 55350, **IS DENIED**.

12. This action is taken under authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

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